Before the

UNITED STATES DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration

UNITED STATES DEPARTMENT OF AGRICULTURE
Rural Utilities Service

IN THE MATTER OF	)	
American Recovery and Reinvestment Act of 2009	)	Docket No. 090309298-9299-01
Broadband Initiatives	)	
Joint Request for Information	)	

Comments of the Montana Telecommunications Association

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I. Executive Summary

MTA reiterates a common theme voiced by the Administration and Congress during the consideration and enactment of ARRA: stimulus funding should be timely, targeted and temporary. Grants and loans provided by NTIA and RUS should provide one-time-only stimulus that can jump-start projects. Long-term issues can be considered in the broader context of the National Broadband Plan being developed by the FCC

Applications by state and local governments for BTOP funds pose an apparent conflict of interest which may displace and/or discourage private investment. Any state or local government applications, as well as any consultation between state or local governments and Federal agencies must be transparent, and subject to public notice and comment.

NTIA should designate RLECs and middle-mile broadband service providers as "other" entities eligible for BTOP grants under §6001(e)(1).

Selection criteria that suggest priority be given to "the greatest population served" create a paradox. The "greatest population" is likely already served with at least a minimal level of broadband service, whereby the hardest-to-reach, most costly, *least populated* areas of the nation are more likely to be unserved or underserved.

NTIA need not "reinvent the wheel" in developing a Broadband mapping program or in devising new or different nondiscrimination and interconnection rules. PL 110-385 provides the foundation for broadband mapping. NTIA should adopt the broadband principles of FCC 05-15 for nondiscrimination and interconnection obligations. To do otherwise may lead to interpretation and litigation that will delay implementation of ARRA.

The 20% non-federal matching requirement must be strictly honored. The match ensures accountability and due diligence of applicants. In-kind or other alternatives to meeting the 20% match should be discouraged.

When establishing the definition of "broadband," "unserved" and "underserved," NTIA should use the FCC's broadband Tiers as provided in FCC Form 477. The higher the bandwidth speed assigned to these definitions, the applications will qualify as either unserved or underserved, and the sooner ARRA stimulus funds will be depleted. MTA finds reasonable recommendations that define unserved as lack of access to first generation broadband, and underserved as lack of access to first generation or as much as Tier 1 broadband service. It is also important that the definition of "area" considers that there may be served, unserved and underserved consumers residing or working in the same "area." For example, a community may have access to broadband, but consumers residing/working 10 miles out of town may not.

MTA cautions against using ARRA funds to create competition that otherwise cannot exist without on-going public support .

Finally, applications for ARRA broadband grants or loans should include an opportunity for third parties to submit letters of recommendation or other endorsements.

II. Introduction: MTA and Montana's RLECs

The Montana Telecommunications Association ("MTA") is pleased to have the opportunity to respond to the Departments' of Agriculture and Commerce Joint Request for Information ("RFI") regarding implementation of the Broadband Initiatives of the American Recovery and Reinvestment Act of 2009 ("ARRA"). MTA represents independent rural telecommunications providers serving business and residential consumers throughout Montana. MTA's members include small and large companies, serving as few as 1,000 customers and as many as 60,000 customers. These companies are both member-owned cooperatives and shareholder-owned commercial telecommunications service providers. They are exemplary—often exceeding national benchmarks—in providing state-of-the-art services, including access to broadband telecommunications technology, to the edges of their networks despite the significant challenges of "distance and density" that they face.

Collectively, the rural local exchange carriers ("RLECs") of Montana provide service to roughly one-third of Montana's access lines, covering 80% of Montana's landmass, an area comprising over 120,000 square miles. These RLECs' service areas *average* fewer than 3 access lines per mile. Yet, these companies provide access to broadband telecommunications services to the vast majority of their customers; in some cases nearly 100% of their consumers have access to broadband services.

This is not to say that Montana's RLECs cannot do even more to enhance their broadband network infrastructure. In this regard, Montana's RLECs have identified a number of projects for which they intend to apply for broadband stimulus funds, which they can, and will immediately invest in broadband facilities that otherwise would not be deployed but for the stimulus funds available in ARRA.

III. General Comments and Themes on the Objectives of ARRA

President Obama and Congress articulated several overarching themes during the debate and enactment of ARRA. These themes were reiterated during the series of information sessions that NTIA, RUS and the FCC jointly held in March.

Congressman Rick Boucher, Chairman of the Communications, Technology, and the Internet Subcommittee of the House Energy & Commerce Cte. summarized many of these themes during an oversight hearing on ARRA implementation issues on April 2, 2009. Specifically, Chairman Boucher expressed his pleasure "that the Administration is treating [NTIA and RUS] allocations as two parts of the same program." He noted the importance of ARRA's requirement that broadband stimulus funding is provided in both unserved and underserved areas. Further, he added that "we want to ensure that everyone has access to broadband…at meaningful speeds and affordable prices and can benefit from competition…" He called for a "sensible definition of 'unserved' [that does not preclude] areas where there is a smattering of broadband service but where the service is generally absent throughout the community." Regarding "underserved" areas, Chairman Boucher stated that "we shouldn't equate underserved only with the absence of competition. Underserved can also refer to communities with inadequate broadband speeds." The Chairman acknowledged the Act's nondiscrimination and interconnection requirements, and concluded with the statement that "it is also important to keep in mind that the stimulus money is not our national broadband policy." MTA commends Chairman Boucher for so succinctly summarizing the major themes of ARRA. We intend to elaborate on these statements of Congressional intent in the following comments.

Another theme expressed by the Administration and Congress is that economic stimulus funding should be "timely, targeted and temporary."[1] This

[1] "Spotlight: Lawrence Summers." Belfer Center for Science and International Affairs. John F. Kennedy School of Government. Harvard University. Summer 2008. http://belfercenter.ksg.harvard.edu/publication/18299/spotlight.html. "By December 19, 2007, he was calling for fiscal stimulus that was 'timely, targeted and temporary…'"

phrase was repeated often during Congressional deliberation of ARRA. For example, USA Today reiterated the theme, and added yet another widely-endorsed policy, in an editorial in on January 26, 2009: "Lawmakers would do well to remember the Four T's: Every provision should be timely, targeted, temporary and transparent."

Further, MTA commends the Administration and Congress for recognizing the importance of stimulating greater broadband supply and demand in the United States. We note, however, that some commonly-cited studies have been misinterpreted. For example, we frequently are reminded that the Organisation [sic] for Economic Co-operation and Development ("OECD") ranks the United States ranks 15th among the world's 30 most industrialized counties in terms of per capita broadband usage, with a total of 25 broadband subscribers per 100 inhabitants.[2] However, according to the Technology Policy Institute,[3] data from the US Census and the Nielson Company together suggest that the OECD data may be missing as many as 70 million business broadband connections. Moreover, because of generally larger U.S. households, OECD's "per inhabitant" data will indicate lower percentages in the U.S. compared to its international competitors. Normalizing for the size of U.S. households alone would elevate the U.S. to 9th among OECD members on a per capita basis. Interestingly, Japan is often cited as the country that's "doing it right" when it comes to broadband deployment. But the same OECD study that ranks the U.S. 15th, ranks Japan even lower: 17th. Further, with the exception of Canada, all 14 countries that rank higher than the U.S. in the OECD statistics can fit inside the borders of Montana. If Montana were a nation, with national resources and a densely populated citizenry, it is likely that we, too, would boast greater broadband penetration on a per capita basis. Finally, we note that the U.S. ranks first in the world by far—according to the OECD—if one switches from per capita to total

[2] Organisation for Economic Co-operation and Development. OECD Broadband statistics. OECD Broadband subscribers per 100 inhabitants, by technology, June 2008. www.oecd.org/sti/lct/broadband

[3] "Understanding International Broadband Comparisons." Scott Wallsten. Technology Policy Institute. May, 2008.

broadband usage. By this benchmark, OECD reports that there are over 75 million broadband subscribers in the U.S., more than 250% more than the next closest country: Japan, with fewer than 30 million broadband subscribers.

Anecdotally, the OECD data do not pass muster. While most OECD per capita statistics are "government supplied," data for the U.S. and a few other countries on the OECD list are described as, "Estimate: OECD estimation based on company reporting." MTA member companies report different findings. These are some of the most rural RLECs in the nation. Yet, about 33 percent of Montana's RLEC consumers subscribe to broadband, which would elevate rural Montana to as high as 4th place on the OECD rankings. It's reasonable to assume that Montana is not significantly different than the rest of the nation in terms of per capita broadband penetration.

If anything, these data demonstrate the need for more accurate measurement of real broadband penetration in the U.S. The Broadband Data Improvement Act of 2008 (PL 110-385), ARRA's broadband mapping section, and the Federal Communications Commission's ("FCC") new Form 477 move us in this direction.

A final theme MTA raises with regard to the implementation of ARRA relates to the "tension" between the practical need to implement ARRA in a timely, targeted and temporary manner, and the longer-term goals of ubiquitous deployment of affordable broadband capabilities that meet or exceed anticipated bandwidth demand for years to come. In MTA's opinion, long-term goals and objectives are best deferred to the National Broadband Plan being developed by the FCC.[4] ARRA, on the other hand, provides the "jump start" to get "essential" broadband capabilities to the nation's unserved and underserved areas first. As Chairman Boucher pointed out, "stimulus money is not our national broadband policy." The National Broadband Plan can build upon the foundation which ARRA establishes.

[4] The FCC released on April 8, 2009 a Notice of Inquiry, "*In the Matter of a National Broadband Plan for Our Future*." GN Docket No. 09-51. FCC 09-31. Adopted April 8, 2009. Comments are due June 8, 2009, and reply comments are due July 7, 2009.

IV. Matters to be Considered

Role of the States. ARRA provides that NTIA "may consult" with states with respect to various aspects of ARRA's implementation. (§6001(c).) The Joint RFI asks to what extent should NTIA consider state priorities in awarding grants or what role states should play in selecting projects. The RFI further asks how to resolve differences among various constituencies within a state, or how to ensure that state-proposed projects are well-executed.

Each of these questions raises significant concerns with granting authority to "states" to determine the direction of BTOP funds. First, there's the issue of what "state" means. For example, regulatory commissions believe they have a role to play in implementing ARRA. So do governors, Tribal entities, local and county governments, state agencies (IT Departments, Departments of Commerce, Economic Development Offices, etc), and so on.

In MTA's opinion, state or local government involvement in the allocation of stimulus funds poses a number of challenges, besides the basic question of identifying who or what speaks for a state. For the reasons stated below, MTA recommends that states be given no more than an advisory role that would involve no more than attesting to the qualifications of an application, but clearly would not authorize states to prioritize or allocate stimulus funds.

Most obvious among the concerns with providing a decisive role for states is the appearance of, if not actual, conflict of interest.[5] If a state or local government applies for a grant, *and* has the authority to allocate grant funds within that same state, clearly a conflict of interest arises. A state could "tilt" the playing field in its favor, if it is both applicant, judge and jury for the application.

[5] MTA notes with some concern that states and government entities have been meeting regularly already with federal officials regarding ARRA implementation, while other, non-governmental representatives have been precluded from conducting such meetings with federal officials. Such a selective meeting policy is discriminatory on its face. At a minimum, unequal treatment of parties simply affirms the appearance of a conflict of interest.

States would enjoy other advantages. Grant applicants must match any federal grant with non-federal funds on an 80/20% basis.[6] The matching requirement is essential to ensure accountability and diligence of applicants; however, in the case of a government applicant, the taxpayer is footing the entire bill, whereas private investors risk their own capital.

Ensuring the temporary (i.e., one-time-only) funding aspect of ARRA is difficult with government projects. For example, using stimulus funds to build network facilities necessarily would entail on-going operational expenses well after ARRA sunsets.

At the joint NTIA/RUS/FCC information session in Washington, D.C., on March 16, 2009, panelists, including Mark Cooper of the Consumer Federation of America, questioned whether putting states in an allocation/prioritization role would add an unnecessary layer of administration, expense, and delay to the application process.

Empowering states with both grant eligibility and grant allocation authority also can discourage private investment. A private investor, with its own matching resources on the line, may feel outgunned if a government entity with public financing "deep pockets" were competing for the same resources in the same market. The result could be a long-term commitment to publicly financed broadband facilities, while private investors would be scared away from the market.

In short, the appearance of a conflict of interest, combined with the potential for political bias and long-term public financing will discourage private investment.

The consultative role of states under ARRA is permissive, not mandatory. Moreover, consultation is different than direction. State and local governments should be precluded from having the authority to pick and chose winners and losers among applicants, particularly if they apply for stimulus funds themselves. Should states be consulted in any advisory capacity only. Such consultation

[6] MTA strongly endorses the matching funds requirement, as discussed in the section on Selection Criteria.

must be fully transparent, with all communications between federal and state government entities noticed and posted within 24 hours of the meeting or discussion on the Recovery website. (See Transparency and Accountability, below.)

Eligible Grant Recipients. ARRA provides that eligible applicants include states and other government entities; nonprofit entities; and "any other entity, including a broadband service or infrastructure provider, that the Assistant Secretary finds by rule to be in the public interest." (§6001(e)(1).) The RFI asks whether entities other than those specified should be eligible for grant awards, and if so, how NTIA should determine whether such other entities would satisfy a public interest standard.

MTA recommends that NTIA designate RLECs as eligible applicants for BTOP grants. ARRA specifically mentions broadband service or infrastructure providers in §6001(e)(1)(C) as an example of "other" entities NTIA should consider. As broadband service and infrastructure providers, RLECs are capable of immediately, effectively and efficiently investing stimulus funds in enhanced broadband networks. RLECs are subject to accountability, transparency and regulatory obligations under Title II of the Telecommunications Act (47 USC). In many cases, RLECs already have met public interest tests by having obtained certificates of public convenience and necessity or by having been designated as eligible telecommunications carriers (ETCs). As Title II common carriers and ETCs, RLECs are subject to significant additional scrutiny. For example, they are subject to both Universal Service Administrative Company (USAC) and to exhaustive FCC Office of the Inspector General (OIG) Attestation audits.[7]

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[7] See "Universal Service Administrative Company Analysis of the Federal Communications Commission Office of Inspector General 2008 Reports on the Universal Service Fund." USAC. February 12, 2009. In three rounds of attestation audits, the OIG is expected to have spent $250 million performing over 2,000 audits of universal service recipients and contributors. So far, first round data indicate that only 0.13% of payments estimated by the OIG as "improper" are recoverable. The OIG has reported no instances of fraud and has recognized a generally high level of program compliance.

As noted above, Montana's RLECs have demonstrated their commitment to providing broadband service to their business and residential customers, already reaching between 75% and 100% of their customers with broadband service. They know without any additional data where broadband service is, and where it is not. In fact, they have already developed plans to provide enhanced broadband service to consumers most in need of it in Montana. These plans include providing broadband capabilities to consumers in unserved and underserved areas. Montana's RLECs' plans collectively will benefit schools, libraries, businesses, healthcare providers and their clients, public safety, vulnerable populations and other constituencies in Montana's hardest to reach areas.

RLECs are ready and able to comply with the various other implementation criteria spelled out in ARRA. For example, they can satisfy *at least* a 20% match with non-federal (i.e., private) financing (§6001(f)); they can provide assurance that projects will be completed within two years following a grant award (§6001(c)(3)); they can provide assurance that any amount received will be used to carry out the purposes of the program in an efficient and expeditious manner and provide a showing that the project would not have been implemented without federal assistance (§6001(e)(3)); they can demonstrate they can carry out a project in a competent manner in compliance with all Federal, State and local laws (§6001(e)(4); they can demonstrate that they will unconditionally obligate, from non-federal sources, funds required to meet the requirements of the program (§6001(e)(5); and they can meet all other requirements and criteria established by ARRA, NTIA, and/or RUS.

RLECs bring a host of additional advantages for efficient, effective and timely implementation of ARRA. They can begin work *immediately*, thereby meeting, if not exceeding, the Title XVI "quick start" provisions of ARRA. Unlike other eligible entities, such as state or local governments, a one-time grant made to an RLEC will not create an on-going public financing obligation. By virtue of being established telecommunications providers in rural America, RLECs have demonstrated sustainability. There is little, if any, risk that broadband stimulus

funds awarded to RLECs will be used to create an uneconomic enterprise that otherwise would not, or could not, survive without public support.

As noted by Senators Max Baucus and Jon Tester,

> In order to deploy broadband swiftly, but dependably, please consider utilizing rural telecoms. They have the necessary expertise for dependably reaching unserved areas, but because of their locations, will be able to quickly initiate projects in their area. They understand where broadband is and is not in their respective locations. Furthermore, because of rural telecoms existing presence in communities, they can more easily tap into existing networks and avoid previous shortfalls unique to rural settings.[8]

Additionally, MTA notes that an essential component of the broadband deployment equation is the "middle mile." As more and more bandwidth is deployed and consumed by end-users, it is essential that broadband access providers are capable of delivering sufficient bandwidth effectively and affordably. An example of such a "middle mile" broadband provider is VisionNet, a broadband access provider in Montana that not only provides "wholesale" bandwidth to RLECs in Montana, but also provides state-of-the-art videoconference facilities and network operations management to telecommunications providers in Montana and elsewhere around the nation. As ARRA is intended to stimulate both supply and demand for broadband services, companies like VisionNet and other backbone providers will need to upgrade their networks and accelerate investments that they otherwise may not have planned for the near term.

It is in the public interest to ensure that such middle-mile broadband providers, as well as RLECs delivering broadband capabilities directly to end-users, qualify as eligible for BTOP grants.

Selection Criteria for Grant Awards. As the RFI indicates, ARRA establishes several considerations for awarding grants. MTA has discussed many of these criteria above in the states' role and eligibility sections. Section 6001(h) provides that NTIA shall, *to the extent practical*, *consider* such criteria as

[8] Letter to Agriculture Secretary Tom Vilsack and NTIA Acting Administrator, Meredith Attwell Baker from U.S. Senators Max Baucus and Jon Tester. March 18, 2009.

affordability, subscribership, bandwidth speeds and enhanced services for healthcare, education or children *to the greatest population of users in the area*.

MTA reiterates that such criteria in this section are permissive considerations that NTIA shall make to the extent practical. These are not mandates. Criteria like affordability, subscribership, bandwidth, and service to key constituencies are important.

However, MTA notes with concern the "greatest population" paradox. While §6001(h) encourages NTIA to *consider—to the extent practical—* applications for providing broadband service to "the greatest population of users in an area," the areas with the "greatest population" are most likely to be served already at least with "basic" broadband services, often by more than one provider. In contrast, the least served areas—at least those served by Montana's RLECs—almost never will contain the "greatest population" of potential users.

The RFI also asks how NTIA can "determine that a Federal funding need exists and that *private investment is not displaced*." (Emphasis added.) The RFI further includes questions about the long-term feasibility and sustainability of investments. MTA considers these essential questions that address the temporary nature of broadband stimulus funding under ARRA. MTA is concerned that, given only limited stimulus funding availability, a state or local government application may indeed displace private investment, especially if states are given a role in which they can influence the allocation or prioritization of grants. Moreover, as noted earlier, government applicants raise concerns of sustainability and long-term feasibility.

Broadband Mapping. ARRA provides up to $350 million to be expended pursuant to PL 110-385, the Broadband Data Improvement Act of 2008 ("BDIA"), and for the propose of developing and maintaining a broadband inventory map pursuant to the broadband stimulus provisions of ARRA. While §6001(l) authorizes NTIA to "develop and maintain a comprehensive nationwide inventory map of existing broadband service capability and availability in the United States," the BDIA largely spells out how broadband mapping should be implemented. MTA recommends that NTIA not "reinvent the wheel," and rely to

the maximum extent practical on the implementation of BDIA by the Secretary of Commerce in coordination with the FCC.

In particular, BDIA authorizes the Secretary of Commerce to award grants to eligible entities that meet a 20% match and "agree to comply with confidentiality requirements in subsection (h)(2),"[9] which protect from public disclosure confidential information "[n]otwithstanding any provision of Federal or State law to the contrary."[10] BDIA further provides that broadband mapping entities use existing "aggregate data collected by the [FCC] based on the Form 477 submissions of broadband service providers."[11] MTA emphasizes the need to protect confidential and proprietary information and recommends that any implementation of broadband mapping provisions of ARRA, §6001(l) be conducted pursuant to the provisions of BDIA.

Financial Contributions by Grant Applicants. ARRA provides that the "Federal share of any project may not exceed 80 percent, except that the Assistant Secretary may increase the Federal share of a project above 80 percent if…the Assistant Secretary determines that the petition demonstrates financial need." (§6001(f).) The purpose of requiring applicants to provide matching shares of program expenses is to ensure that applicants are accountable for the execution of their projects. If an applicant cannot come up with 20% or more of the costs of a project, then one must wonder how viable the project is, or how reliable the applicant is. The match is designed to weed out weak applications. Therefore, petitions to increase the Federal share of a project must be looked at skeptically.

For example, during one of the NTIA/RUS/FCC joint information sessions, a local government representative in the audience asked whether an "in-kind" match would be considered. The questioner offered his community's right-of-way as a matching contribution. Right of way, and other non-financial matches are difficult, if not impossible, to value. To a local government, right of way has a book value of $0, until they charge a utility, for example, for the use of it. An

[9] 47 USC 1304(c)
[10] 47 USC 1304(h)
[11] Id.

entity that cannot raise 20% of the cost of a project may not be able to sustain the cost of a project if there are any on-going expenses that remain after the project is funded.

Moreover, MTA notes that §6001(f) does not contemplate a complete waiver of an applicant's obligation to match at least some share of the project cost, even under exigent circumstances. Rather, the section provides for a possible increase in the federal share above 80%.

As for cases in which the federal share may be less than 80 percent, there may be situations in which some applicants may offer to increase their match if such an offer were to increase their prospects for obtaining stimulus funding. NTIA could "stretch" the value of its grants awarded to applicants if applicants were willing, upon request, to absorb a greater share of the match.

Regarding what showing should be necessary to demonstrate that a proposal would not have been implemented without Federal assistance, MTA suggests an affidavit, or some other certification signed by the applicant would suffice.

Timely Completion of Proposals. MTA members are willing and able to initiate projects as soon as funding is made available and complete them within two years. These RLECS would be able to comply with any reporting requirements in ARRA and any associated timelines, milestones, or letters of agreement.

Coordination with USDA's Broadband Grant Program. MTA recommends that NTIA and USDA/RUS use common applications and interfaces to the maximum extent possible.

Definitions. MTA recognizes that many organizations will be commenting on the definitions of "broadband service," "unserved area," and "underserved area." As Chairman Rick Boucher said in his opening statement at the ARRA oversight hearing on April 2,

> It is also important to keep in mind that the stimulus money is not our national broadband policy. It is an important first step in getting broadband out to more unserved and underserved areas, but the Subcommittee will continue to be actively involved in looking at ways to

achieve universal broadband deployment, including by making broadband eligible for universal service fund support.

MTA agrees. Specifically, the definition of "unserved area" and "underserved area" can, and should, be different for purposes of implementing ARRA, on the one hand, and developing a National Broadband Plan on the other hand.

With regard to ARRA, there's "only" about $7 billion of total broadband stimulus funding available. That's less than $140 million per state (not including D.C., U.S. territories, Indian tribes, or other eligible organizations), assuming, *arguendo*, the $7 billion is allocated evenly among states.[12] The speed with which ARRA funding is depleted is directly related to the definitions of broadband, unserved and underserved areas. If, for example, "unserved area" is defined as an area with access to 56 kbps or less, then there will be few areas considered unserved, and there would be fewer applications to provide "broadband" service to "unserved" areas under this definition. On the other hand, if "unserved" were defined as 1 mbps, for example, then a far greater number of consumers would be considered unserved; many more grant applications would qualify for "unserved area" broadband deployment; and the cost of providing ARRA funds to meet the threshold goal of deploying "broadband" to "unserved" areas would necessarily increase, thereby rapidly depleting the $7 billion available for broadband stimulus funding.

MTA concurs with many commenters who are expected to refer to the FCC's broadband tiers used in FCC Form 477. If the goal of ARRA is to take an important, "first step in getting broadband out to more unserved and underserved areas," then MTA suggests defining "broadband" as greater than 200 Kbps. An area with less than 200 kbps bandwidth available to consumers in the area therefore would be "unserved." "Underserved areas" could be defined as the next tier up from "unserved," or areas that lack access to "first generation" broadband (>200 kbps and <768 kbps). Others reasonably argue that the

[12] MTA does not endorse "even" allocation of broadband funds among states. Montana, for example, is far more rural, with more hard-to-serve, remote areas, which require far greater network investment expenses than, say, Rhode Island.

starting point should be higher. That is, "unserved areas" should be any area that lacks first generation broadband service, and underserved areas should be areas that lack access to Tier 1 broadband capabilities (> 768 kbps and < 1.5 mbps). MTA finds this definition plausible as well. The point is, the higher the bandwidth definition for "unserved" or "underserved" the more areas qualify for funding support, and the sooner the support runs out under ARRA's limited funding availability. In either definition, the FCC's definition of "first generation" broadband is sufficient to enable most of today's basic broadband needs. More robust definitions can be considered in the context of the National Broadband Plan.

It is important to consider "area" as an integral component of the definition of unserved and underserved. As Chairman Boucher indicated, "we would not…want to exclude areas where there is a smattering of broadband service but where the service is generally absent…" For example, there are many communities in Montana that have access to broadband DSL service in the 768 kbps to 1.5 mbps range. Consumers in these communities reside or work within "DSL range" (i.e., 18 kft) of a central office (CO). However, consumers residing/working in the exchange "area," but outside of the DSL range, may not have access to broadband service, if there are no loop carrier systems deployed from the CO. Thus, the exchange "area" may have a combination of served, unserved, and underserved consumers. It is important that ARRA's stimulus funds reach those unserved and underserved consumers in such an "area" that may also include consumers with access to broadband service.

The RFI also asks how to define nondiscrimination and network interconnection obligations that will be contractual conditions of grants awarded under §6001. MTA again recommends that NTIA avoid reinventing the wheel, and instead adhere to the principles contained the FCC's broadband policy statement (FCC 05-15, adopted August 5, 2005), as provided in §6001(j). These principles are well understood and tested. They should apply to all applicants in accordance with the principles of technological neutrality. To create new definitions of nondiscrimination or network interconnection obligations would

inject ambiguity, interpretation, and ultimately litigation into the ARRA grant process and thereby threaten to delay timely implementation of ARRA.

As noted at the beginning of this subsection, implementing ARRA is more time-sensitive than developing a National Broadband Plan. Issues regarding long-term broadband deployment goals can, such as ubiquitous access to higher bandwidth speeds, affordability, and alternative nondiscrimination obligations (if necessary) can, and should, be considered in the context of the National Broadband Plan.

V. Other Issues

Transparency and Accountability. Title XV requires state or local governments to certify that investments made by government entities have "received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Such certification shall…be posted on a website" pursuant to §1526. (§1511. Emphasis added.) MTA is not aware of the review and vetting procedures required by law as referenced in this section. We therefore recommend that Assistant Secretary require a process for public notice and comment, prior to the submission of a grant application by a state or local government entity, and that such public comment be included with the application and posted on the website established by §1526.

Competition. Funding is provided in Division A, Title I of ARRA for the RUS Distance Learning, Telemedicine, and Broadband Program. Funds are subject to number of provisos, including one that states, "priority for awarding such funds shall be given to project applications for broadband systems that will deliver end users a choice of more than one service provider." Another proviso stipulates that "priority shall be given for project applications from borrowers or former borrowers under title II of the Rural Electrification Act of 1936..." These two provisos appear to be contradictory. RUS has a longstanding policy of avoiding pitting one RUS borrower against another in the same area. If RUS has funded a borrower in an area, it makes little sense to fund another in the same

area. While such a policy might promote competition, at least temporarily, it also may threaten the ability of one, or both borrowers to remain viable and able to repay their loans, especially in rural areas like the ones served by RUS borrowers where markets often do not support multiple providers. MTA recognizes the value of promoting competition. We caution however, against funding competition for competition's sake. For example, if a market is already served by a broadband provider, RUS (or NTIA) should be certain that funding a second broadband provider does not establish subsidized competition that depends on continued public assistance to remain viable. That is, it is important to avoid creating a situation where one competitor is dependent on continued public support to remain viable, while the other broadband competitor is weakened by the newly created subsidized competitor. A market that at one time may have supported a single broadband provider may be faced with two non-sustainable providers, or one remaining provider that is dependent on public support.

Endorsements. MTA recommends that applications include the opportunity for third parties to attach letters of recommendation, resolutions, or other forms of endorsement. An applicant may submit a proposal for a project that provides broadband service to a public safety agency, for example. The public safety agency may wish to send a letter of support for the application. MTA recommends that the agency, or other third parties, be given an opportunity to submit comments in behalf of projects and/or applications which they support.

Respectfully submitted,

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